

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

ROGER BUEHL,

Plaintiff

V.

JON FISHER, *et al.*,

Defendants

Civil Action No. 10-02288

Judge James M. Munley

Electronically Filed

PLAINTIFF'S MOTION TO AMEND AND SUPPLEMENT HIS COMPLAINT
PURSUANT TO RULE 15

1. Plaintiff Roger Buehl filed this civil rights action on November 4, 2010, asserting First and Fourteenth Amendment claims arising from events during Plaintiff's incarceration at SCI-Smithfield, a Pennsylvania Department of Corrections prison in Huntingdon, Pennsylvania.

2. Plaintiff's complaint includes retaliation, equal protection, and due process claims arising from events and conditions at SCI-Smithfield.
3. Defendants filed a motion to dismiss the complaint, along with a statement of facts, on January 24, 2011, and filed a supporting brief on February 14, 2011.
4. On March 28, 2011, Plaintiff filed a brief in opposition to Defendants' motion to dismiss, accompanied by an answer to Defendants' statement of facts.
5. Defendants filed a reply brief in support of their motion to dismiss on April 20, 2011.
6. Defendants' motion is currently pending before this Court.
7. On May 18, 2011, Plaintiff filed a motion for preliminary injunction in connection with a series of events at SCI-Smithfield which began in early April 2011, resulting in, among other things, Plaintiff's placement in the RHU.
8. Plaintiff's motion for preliminary injunction asserted that Defendants' conduct during the series of events was in retaliation for Plaintiff's constitutionally protected activities of filing grievances and lawsuits.

9. In his motion for preliminary injunction, Plaintiff requested, among other things, that the Court enjoin the SCI-Smithfield Defendants from carrying out further retaliatory actions against him and release him from the RHU.
10. Plaintiff filed a supporting brief on June 1, 2011, followed by additional supporting exhibits on June 22, 2011 and July 7, 2011.
11. Defendants filed a brief in opposition, with supporting exhibits, on July 21, 2011.
12. On August 9, 2011, Plaintiff was transferred by Defendants from SCI-Smithfield to SCI-Mahanoy, in Frackville, Pennsylvania.
13. Plaintiff was transferred from the RHU at SCI-Smithfield to the RHU at SCI-Mahanoy.
14. On August 23, 2011, Plaintiff was released from SCI-Mahanoy's RHU into general population.
15. As a result of Plaintiff's transfer from SCI-Smithfield and release from the RHU, many of the requests for immediate injunctive relief asserted in Plaintiff's motion for preliminary injunction appear to have been rendered moot.
16. Accordingly, Plaintiff has filed a motion to withdraw his preliminary injunction motion, on today's date.

17. Due to Plaintiff's transfer, and resultant change of circumstances, the complaint's claims for injunctive relief based on defendants' violations of Plaintiff equal protection and due process rights appear to have been rendered moot.
18. Accordingly, Plaintiff seeks to amend the complaint pursuant to Federal Rule of Civil Procedure 15(a) to delete these claims.
19. Notwithstanding Plaintiff's withdrawal of the preliminary injunction motion, the facts on which the preliminary injunction motion was based (arising from the series of events beginning in April 2011) support new constitutional claims.
20. Plaintiff seeks to supplement his complaint under Federal Rule of Civil Procedure 15(d) to allege these facts and add these new claims.
21. Like the claims raised in the original complaint, Plaintiff's new claims challenge Defendants' actions on First and Fourteenth Amendment grounds and arise from a continuing course of Defendants' conduct.
22. It is in the interest of justice that Plaintiff be permitted to amend and supplement his complaint, as described above.
23. Discovery has not yet commenced in this case.
24. Permitting Plaintiff to amend and supplement his complaint will promote a more complete adjudication of the dispute between the parties.

25. Amending and supplementing the complaint, as described above will neither prejudice the Defendants nor delay the trial in this matter.

26. In accordance with Local Rule 15.1(a) and (b), Plaintiff's proposed amended and supplemental complaint is attached hereto as Exhibit A and a copy of the original complaint, with stricken and new material marked, is attached hereto as Exhibit B.

WHEREFORE, Plaintiff respectfully requests that this Honorable Court grant his Motion to Amend and Supplement the Complaint Pursuant to Federal Rule of Civil Procedure 15 and enter the accompanying proposed Order.

Respectfully submitted,

PENNSYLVANIA INSTITUTIONAL
LAW PROJECT

Date: August 30, 2011 BY:

/s/ Jennifer J. Tobin

Jennifer J. Tobin

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Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I, Jennifer J. Tobin, certify that on August 30, 2011, the foregoing motion, along with all accompanying attachments, was filed via the Court's ECF system and is available for viewing and downloading therefrom. In addition, the following individuals were served with a copy of the foregoing motion and all accompanying attachments via the ECF electronic notification system:

Michael L. Harvey
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Attorney for Defendants

Date: August 30, 2011

/s/ Jennifer J. Tobin
Jennifer J. Tobin
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